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Appropriations Committee
March 10, 2011

[AGENCY 11]

SENATOR HEIDEMANN: Is anyone else wishing to testify on Agency 10? Seeing none, we will close the public hearing on Agency 10 and open up the public hearing on Agency 11, the Attorney General. Welcome. [AGENCY 10]

JON BRUNING: Thank you, Mr. Chairman, members of the Appropriations Committee. I'm Attorney General Jon Bruning, B-r-u-n-i-n-g. I understand that you guys have a tough job. You have difficult budget decisions. I appreciate all your work in this regard. I have two requests. First, I request that you fully appropriate my agency's budget request in Program 496 which is the funding for arbitration and litigation arising from the Republican River Compact. Second, I have a request for reappropriation of two cash fund balances. So the Program 496 budget request, we're again defending the state's sovereign interests against allegations of noncompliance by the state of Kansas on the Republican River Compact. In May of last year, the state of Kansas filed a motion for leave to file petition in the U.S. Supreme Court that Nebraska overused our share of the Republican River water in 2005 and 2006. The state has completed a round of preliminary briefing. We just received the U.S. Solicitor General's brief last week which advised the U.S. Supreme Court to take jurisdiction. It also appears the federal government is going to align with Kansas in this case. So their claims before the Supreme Court are based on the issues in the arbitration. You know, in the beginning, you guys remember this, they asked for \$72 million, then they reduced that to \$9 million. Ultimately they wanted to shut down 500,000 acres of groundwater. This would have devastated southwest Nebraska. We were successful in defending the claim. The arbitrator awarded \$10,000 with no shutdown of irrigated acres, \$72 million to \$9 million to \$10,000--a very successful defense. We've also recently defended another arbitration initiated by Colorado pursuant to the compact there and the final settlement. These actions have not only required significant travel by our folks in the basin in the three-state area, but we've had to hire a lot of experts. This ultimately comes down to expert witnesses in how much water has gone across the border or not. Seventy-two

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million is a significant damage claim. It's real money we're talking about. If the restrictions that are advocated by Kansas are adopted, it would be devastating. The lost revenue and the negative economic impact in south-central and southwest Nebraska, it would absolutely devastate that area. If you take 500,000 irrigated acres out of production, you might as well sign the death note for that part of the state. So we have to continue to keep defending. I think we're doing it as cheaply as can possibly be done. They're struggling against difficult financial times, too, but they're spending freely. They transferred \$2 million, almost \$2 million, to the Kansas Attorney General's Interstate Water Litigation Fund. Those funds were used after the state had drained more than \$17 million, the state of Kansas had drained more than \$17 million previously earmarked for water litigation. The Kansas Legislature gave the Kansas AG the authority to issue bonds in FY 2011, not to exceed \$19 million for expenditures on interstate water. So these guys are lawyering up big time. They also have legislation in place that allows them to spend their winnings, so they're planning to win. We, of course, are planning for them not to win. The first \$20 million in damages they receive will refill that Interstate Water Litigation Fund. We have reached out to the Kansas AG. I was, in fact, in Washington earlier this week, met with Derek Schmidt, the new Kansas Attorney General that was sworn in, in January; told him I want to come to Topeka, we want to settle this thing, we want to keep talking. He's willing to do it. They have a new Governor as well, Sam Brownback, who was in the Senate, but before he was in the Senate and the House, he was head of their basically DNR. Wasn't he, Dave, wherever David is at? [AGENCY 11]

DAVID COOKSON: Yeah. [AGENCY 11]

JON BRUNING: Yeah. Or director of ag, excuse me, he was director of ag. So Governor Brownback I think understands these issues as well. But we have to continue to be able to defend this case. The two cash fund balances I wanted to ask you to reappropriate are Program 507, requesting reappropriation of the unexpended cash fund balance there in Program 507. This is related to continuing litigation of the Tobacco

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Master Settlement Agreement. That is enormously important to Nebraska, about \$40 million a year comes in there. We need to be able to defend our interests there. And the reappropriation of unexpended cash fund balance in Program 290. This is the Yahoo settlement we've used for Internet safety training and enforcement. So with that, Mr. Chairman, members of the committee, I ask you approve our request for the Office of Attorney General. You note we don't discuss the cuts that you're making to our budget and others' budget. We are willing to accept those and live with them. [AGENCY 11]

SENATOR HARMS: Thank you for your testimony. Do we have any questions? Senator Conrad. [AGENCY 11]

SENATOR CONRAD: Thank you, Mr. Attorney General. If you could, and I know that we are all veterans on the committee so we've probably been through some of this basic information before, but just as you see it and we try and get a handle on the best and highest use of limited resources available during particularly tough economic times, what do you really see as the top priorities of your office? [AGENCY 11]

JON BRUNING: Well, I think there's a myriad of priorities. Obviously, dealing with requests from members of the Legislature to determine the constitutionality of legislation is important. Defense of civil claims against the state is immensely important. Jay Bartel, for example, who does tax law for the state, in one of those cases if we're not able to continue to afford Jay we certainly could...it could cost the state millions in a single case. I think it's important that the Attorney General's Office represent the interests of Nebraska nationally too. I feel strongly about the healthcare litigation and have had literally thousands of citizens say thank you for being a part of that. That costs almost nothing, by the way. I think our total expenditure at this point has been \$5,000. But I think there are myriad number of issues that are important. [AGENCY 11]

SENATOR CONRAD: No, I agree and I think we can...it's a well-established fact that we can all agree upon that there's a lot on the Attorney General's plate and within their

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jurisdiction. And why I'm asking this really gets to the request related to the water litigation money, because I think, again, it's not really a values issue in terms of members of this committee or folks in your office or other aspects of government in recognizing that we need to have the appropriate resources available to defend our state and its citizens' interests. And I guess I'm wondering if water litigation is a top priority, why does it need an additional appropriation? Why isn't that able to be funded by existing appropriations? [AGENCY 11]

JON BRUNING: Well, we do have an in-house ag and natural resources division which has existed since I became Attorney General. I think it's been very, very effective in helping to husband the resources of the state. There was a great deal of outside counsel money being spent prior to me becoming Attorney General and I think we have managed to do much of that work in-house. Certainly experts cost money. That's the one thing we can't control for. When you need a hydrologist, it costs what it costs and you can shop for the cheapest one but, of course, that's a function of value. You don't want to necessarily get the guy who's the cheapest or the woman who's the cheapest. You want to get somebody that's a combination of expert and reasonable in terms of their fees. So we do...the request is mostly for experts. [AGENCY 11]

SENATOR CONRAD: Okay. [AGENCY 11]

JON BRUNING: We can talk about the details of that, but it's a privileged thing and we got to do the whole clear the room. We can talk to you guys at any time you want us, but I know Dave has it in his hand exactly where that's going to go, dollar for dollar. Each of you certainly is privy to that money, how that's spent, and we'll tell you, but we have to do it confidentially. [AGENCY 11]

SENATOR CONRAD: No, I appreciate that. That's sufficient. And then can you tell me in terms of dealing with budgetary issues, over the last couple years we've all been struggling to shoulder the burden in an equitable manner. Has your office taken...have

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you reduced staff? Have you had furloughs? Have you instituted pay freezes? What internal kinds of management decisions have you made to manage these tough times from a budget perspective? [AGENCY 11]

JON BRUNING: We have not done furloughs but we have done pay freezes. We have certainly curtailed travel and we certainly have not refilled open positions. And so there are...we've just tried to, like a lot of agencies, make do with less. So there are...I can tell you my department heads, if I were to bring them in here, they would...they have been screaming for assistance. It's very difficult. Each time another case arrives, it's not as if there are lawyers that have nothing to do. They have full caseloads and it goes on the stack and is dealt with in due course. But our lawyers deal with, you know, immense caseloads in many cases and, in fact, you know, I mean I won't name names but in the last year I bet I've had three call and say, I just can't handle it, I'm ready to go and, you know, you don't pay me enough to work 80 hours a week. But the work doesn't...the work doesn't stop. It keeps coming and luckily these are very conscientious, hardworking people and they give the taxpayers great value. [AGENCY 11]

SENATOR CONRAD: Well, I think that you could find a lot of members of this body who share that sentiment about compensation and workload but...(laugh) [AGENCY 11]

JON BRUNING: Especially the members of this body. Yeah, I completely agree, it's ridiculously underpaid to be a legislator. [AGENCY 11]

SENATOR CONRAD: Right. Well, I saw an advertisement that was forwarded to me by a constituent this fall that your office was advertising for communications interns and other interns, not really law clerks, but I think offering, I don't know, 10 or 20 bucks an hour. And I'm just wondering, are you still paying interns at this point in time and how many do you have on staff and... [AGENCY 11]

JON BRUNING: We have...I mean there are a lot...there's two different offices, Senator.

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There's...certainly there's the office downtown at the Tier One Building where most of the assistant attorneys general sit and then there's a group at Roads and then there's those of us here at the Capitol. My communications director is absolutely swamped. I've been through, I don't know, six of them since I've been Attorney General. The phone rings all day every day, cell phone all day every day, it is a burnout job. You can talk to any of them. I think it's one of the hardest jobs in state government. She is tremendously underpaid and she is spectacular. And so I am constantly begging her or whoever the occupant is, I'm trying to keep them because it is so...the media is unrelenting in their interest in what's going on in the Attorney General's Office, and I think part of it is we've been a fair arbiter and so they call us to see how should this...how should this problem be solved, whether we have any direct interest in it or not. So in direct answer to your question, I can't even tell you how many interns we have, but I certainly would be very supportive of my communications director having interns paid and unpaid. She usually has four or five of them at any given time. It's the only way to get through the workload. The mail comes in daily in stacks. I think part of that is because Nebraskans trust us to help solve their problems, and I think ultimately that's what we're all here for. [AGENCY 11]

SENATOR CONRAD: Great. And then finally there was a lot of media attention in recent months related to your decision to kind of change your mind in relation to a request for federal funds to help combat meth in our communities. [AGENCY 11]

JON BRUNING: Right. [AGENCY 11]

SENATOR CONRAD: And I'm wondering then what internal steps you've taken to continue that work with state resources. [AGENCY 11]

JON BRUNING: Yeah, I'll tell you about that. You know, the Attorneys General had a presentation from a group called the Montana Meth Project. It was an ad campaign that was a very stark ad campaign that when you saw these ads or these print ads or

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television ads it might be a really dirty bathroom with somebody laying in it, putting a needle in their arm using meth, and it was just a...it was a shock campaign, very, very effective. It was a guy named Siebel, I don't remember...the company Siebel, whatever his first name is, a billionaire, he started this thing in Montana and it dropped meth use dramatically. I thought it was a great idea. I really wanted to do it. I went to Senator Nelson, talked about it with him. I don't recall the exact year, '06, '07 probably, something like that. Senator Nelson agreed to help and it just kind of went away for a few years and Senator Nelson came back and said we have \$500,000 earmarked for the Montana Meth Project. There's been some kind of misinformation about what it could have been used for. I didn't have a choice of how to use it. It was going to be used for ads for the Montana Meth Project. The Montana Meth folks won't let you do it with just \$500,000. They have for each state, depending on your population, a minimum amount they want to spend. They don't want to do a little shot campaign; they want to do a big shot campaign. And so my recollection, it was a couple million dollars we had to figure out how to raise, so there was kind of a twofold problem. One was I wasn't sure how to get the rest of the \$1.5 million. When we went to Senator Nelson, we were still trying to solve that problem. But secondarily, it was an earmark and I don't believe in earmarks. I think given the problem with the federal debt and the federal deficit, the best choice was to send it back to the federal Treasury. And I think ultimately the earmark process in the Senate is wrong and so I sent it back. When I asked Senator Nelson for the help, I asked him for the help; I didn't ask for an earmark or ask for any particular way of helping. He chose to earmark it. Maybe I should have been aware that's how it would be done, but I wasn't. When it came back as an earmark I said, no, we're not going to take it that way. So I sent it back. And ultimately, you know, every four years, the people of Nebraska have the opportunity to elect somebody that's going to use their judgment. My judgment was don't take an earmark, so I didn't. [AGENCY 11]

SENATOR CONRAD: Okay. Well, that's a helpful perspective because I was very concerned. Even though Nebraska has made great strides in helping to reduce instances of use and associated effects in terms of meth and meth labs in our

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communities, I think that it's fair to say that there's still a lot of work to be done...
[AGENCY 11]

JON BRUNING: Absolutely. [AGENCY 11]

SENATOR CONRAD: ...and so that we should really, I think, be able to find common ground to utilize all resources we have available to do so. I think that's it. Thank you.
[AGENCY 11]

JON BRUNING: Thank you, Senator. [AGENCY 11]

SENATOR HEIDEMANN: Any other questions? Seeing none, thank you for coming in today. [AGENCY 11]

JON BRUNING: Thank you, Mr. Chairman. [AGENCY 11]

SENATOR HEIDEMANN: Is anyone else wishing to testify on Agency 11, the Attorney General? Seeing none, we will close up the public hearing on Agency 11 and open up the public hearing on Agency 12, the State Treasurer. [AGENCY 11]